

FILED

United States v. Gamino, No. 05-50020

MAR 10 2006

FISHER, Circuit Judge, concurring:

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

I concur in the court's disposition. I write separately to note only that Gamino's decision at sentencing to maintain his innocence – and therefore deny knowledge of the drugs – did not in and of itself preclude the district court from applying the two-level reduction under USSG § 5C1.2(a). *See United States v. Sherpa*, 110 F.3d 656, 660-61 (9th Cir. 1996). I agree that given the evidence of Gamino's guilt, the district court did not err in finding him ineligible for a safety valve adjustment. *See id.*